Internal Revenue Service

Number: **201015025** Release Date: 4/16/2010

Index Number: 2601.04-01, 2001.00-00,

2033.00-00, 2035.00-00, 2036.00-00, 2037.00-00, 2038.00-00, 2041.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To: CC:PSI:B04 PLR-141072-09

Date: DECEMBER 30, 2009

Re:

LEGEND

Settlor =

Son =

Daughter =

Grandchild 1 =

Grandchild 2 =

Grandchild 3 =

Grandchild 4 =

Trust A =

Trust B =

Trustee =

Date 1 =

Date 2 =

Company =

<u>x</u> =

<u>y</u> =

z =

State = Statute 1 = Statute 2 =

Dear :

This responds to a letter from your authorized representative dated September 8, 2009, and subsequent correspondence, requesting rulings on the generation-skipping transfer (GST) and estate tax consequences resulting from the proposed modifications to two trusts.

You represent the facts to be as follows. On Date 1, Settlor created an irrevocable trust, Trust A, for the primary benefit of his son, Son, and Son's issue. Son has four children, Grandchild 1, Grandchild 2, Grandchild 3, and Grandchild 4. Date 1 is prior to September 25, 1985. Trust A is governed by the laws of State, and Trustee, a bank, is currently serving as trustee.

Article Two, Section 2.2(a) of Trust A provides for mandatory distributions of net income to Son in guarterly payments. Section 2.2(b) provides for specified distributions of principal to Son upon reaching certain age requirements. Upon Son's death, if Son has then living issue, the remaining trust assets remain in trust for such surviving issue and will be divided into shares for each such surviving issue per stirpes. The trust for each of Son's issue provides for mandatory distributions of net income in quarterly installments, and, when such issue attains the age of twenty-one, the trust held for such issue is distributed to each such issue free of any trust. Under section 2.2(f), the Trustee, in the Trustee's discretion, may distribute principal to a beneficiary who is then drawing all or part of the net income, after taking into consideration other assets and means of support available to such beneficiary, for the beneficiary's education or to pay the medical, hospital or related expenses of such beneficiary occasioned by such beneficiary's illness or the illness of such beneficiary's spouse or children. If, upon the death of Son, Son does not have then surviving issue, but is survived by Sister, all of the remaining assets of Trust A shall be distributed to a separate trust created for Sister on Date 1. Section 2.2(j) provides that, unless sooner terminated by its terms, Trust A will terminate twenty-one years after the death of the survivor of Settlor, Son and Daughter.

On Date 2, Settlor created another irrevocable trust, Trust B, also for the benefit of Son and Son's issue. Date 2 is prior to September 25, 1985. Trust B is governing by the laws of State, and Trustee is currently serving as trustee. With certain exceptions, the terms of Trust B are substantially identical to those of Trust A. Trust B provides for mandatory distributions of net income to Son in quarterly payments, however the ages of principal distribution and the amounts of principal distribution to Son, as well as the

conditions for discretionary principal distributions to Son and other beneficiaries are slightly different. The terms of succession of the trustees are also different.

State Statute 1 generally provides that a settlor and all beneficiaries of a trust, without court approval, may modify a trust instrument. Pursuant to State Statute 1, Settlor and the beneficiaries of Trust A and Trust B propose to execute an agreement to modify both trusts. Specifically, §§ 3.3 through 3.7 of Article III of Trust A will be removed and replaced with new §§ 3.3 through 3.15. With respect to Trust B, Article III, § 3.1(o) will be modified and §§ 3.3 through 3.4 will be removed and replaced with new §§ 3.3 through 3.13.

Article III of Trust A and Trust B generally contain provisions relating to the trustee. Some of the proposed modifications include provisions relating to the removal of a trustee, resignation of a trustee, the appointment of successor trustees and cotrustees, and trustee compensation. In addition, a provision will be added authorizing the appointment of an Investment Advisor and a Company Investment Advisor. The Company Investment Advisor will have the sole discretion to direct the investment decisions with respect to any Company stock held by the trusts, including the right to vote the Company stock held in Trust A and Trust B. Son will serve as the initial Company Investment Advisor. During Son's lifetime, Son will have the power to appoint, remove and replace Investment Advisors, including the power to appoint himself as Investment Advisor. Son will also have the power to remove and replace the Trustee. Any successor trustee must be a corporate trustee that is not a related or subordinate party as defined in § 672(c) with respect to Settlor or any then living beneficiaries of the trust. The successor corporate trustee must have capital and surplus of not less than \$250,000,000, including the capital and surplus of any subsidiary, affiliate or related entity. Trust A and Trust B specifically provide that any Company Investment Advisor and any Investment Advisor will be considered a fiduciary with such duties and obligations as provided in State Statute 2. Trust A and Trust B also provide that, in addition to the powers conferred by law or elsewhere in the trust instrument, the Trustee shall have the power to adjust between principal and income to the extent the Trustee considers necessary as provided in State Statute 2.

Company is a publicly traded company. Son owns \underline{x} shares of Company stock. Trust A and Trust B combined own \underline{y} shares of Company stock. The combined ownership of Company stock by Son, Trust A, and Trust B equates to $\underline{z}\%$ of the outstanding common stock of Company. You represent that there have been no additions to Trust B since September 25, 1985.

You have requested the following rulings:

1. The modifications to Trust A and Trust B as provided under the proposed agreement will not cause Trust A or Trust B to lose its status under § 1433 of the Tax Reform Act of 1986 as exempt from GST tax under Chapter 13.

2. The modifications to Trust A and Trust B will not cause any portion of the assets of Trust A or Trust B to be includible in the gross estate of Settlor, Son, or any beneficiary of Trust A or Trust B, except to the extent of property that is distributed to such person and remains in his or her estate at the date of his or her death.

GENERATION-SKIPPING TRANSFER TAX ISSUE -- RULING NO 1

Section 2601 imposes a tax on every GST which is defined under § 2611 as a taxable distribution, a taxable termination, or a direct skip.

Section 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i) provide that the GST tax shall not apply to any GST under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer was not made out of corpus added to the trust after September 25, 1985, (or out of income attributable to corpus so added). Section 26.2601-1(b)(1)(ii) provides that any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor had a power that would have caused inclusion of the trust in settlor's gross estate under § 2038 or 2042 if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, these rules are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. Unless specifically noted, the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of section 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification will not cause an exempt trust to be subject to the GST tax if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification of an exempt trust will result in a shift in a beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a generation-skipping transfer or the creation of a new generation-skipping transfer.

In the present case, Trust A and Trust B are exempt from the GST tax because Trust A and Trust B were irrevocable on September 25, 1985. You have represented that no additions, actual or constructive, have been made to any of the trusts after that

date. Accordingly, pursuant to § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), the trusts are not subject to the GST tax.

You represent that the proposed modifications are authorized under State law. Based on the facts and representations, we conclude that the proposed modifications: (1) will not result in a shift of any beneficial interest in Trust A or Trust B to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. In addition, the modifications do not extend the time for vesting of any beneficial interest in Trust A or Trust B beyond the period provided for in the original trust. Therefore, the proposed modifications will not cause Trust A or Trust B to be subject to the provisions of chapter 13.

ESTATE TAX ISSUES - RULING NO. 2

Section 2001 imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2033 provides that the value of the gross estate includes the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 2035(a) provides that (1) if the decedent transferred an interest in property or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and (2) the value of the property (or interest therein) would have been included in the gross estate under §§ 2036, 2037, 2038, or 2042 if the interest or power had been retained by the decedent on the date of death, then the value of the gross estate includes the value of any property (or interest therein) that would have been so included. Under § 2035(b), the gross estate shall be increased by the amount of any gift tax paid by the decedent or his estate on any gift made by the decedent or his spouse during the three year period ending on the date of decedent's death.

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period that does not in fact end before his death, (1) possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income from the property.

Section 2037(a) provides that the value of the gross estate includes the value of all property to the extent of any interest therein of which the decedent has at any time

made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if (1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property, and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

Section 2038(a)(1) provides that the value of the gross estate includes the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fine sale for adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power during the 3-year period ending on the date of the decedent's death. Section 20.2038-1(a)(2) of the Estate Tax Regulations provides that § 2038 does not apply if the decedent's retained power could be exercised only with the consent of all parties having an interest in the property and the power adds nothing to the rights of the parties under local law.

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property with respect to which the decedent possessed a general power of appointment at the time of death. Section 2041(b)(1) defines the term "general power of appointment" as a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate.

In order for §§ 2035 through 2038 to apply, a decedent must have made a transfer of property or any interest therein (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) under which the decedent retained an interest in, or power over, the income or corpus of the transferred property. In the present case, the proposed modifications to Trust A and Trust B do not change the beneficial interests of the beneficiaries. Thus, the proposed modifications will not constitute a transfer by any beneficiary within the meaning of §§ 2035 through 2038. Further, under the facts presented, the proposed modifications will not result in the grant of a power of appointment to any beneficiary. Finally, Trust A and Trust B are being modified pursuant to authority granted under Statute 1; accordingly, Settlor's act of consenting to the modifications does not constitute the exercise of any retained power over the trusts. We therefore conclude that the proposed modifications to Trust A and Trust B will not cause any portion of the assets of Trust A or Trust B to be includible in the gross estate of Settlor, Son, or any beneficiary of Trust A or Trust B, except to the extent of property that is distributed to such person and remains in his or her estate at the date of his or her death.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the facts described above under the cited provisions or any other provisions of the Code or regulations.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statements executed by the appropriate parties. While this office has not verified any part of the material submitted in support of the request for rulings, it is subject to verification and examination.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office a copy of this ruling is being sent to your authorized representative.

Sincerely yours,

George L. Masnik Chief, Branch 4 Office of the Associate Chief Counsel (Passthroughs and Special Industries)

Enclosure
Copy for section 6110 purposes